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Judiciary Committee
300 Capitol Avenue
Hartford, CT 06106

Re: H.B. 6641

To the Committee:

Regarding the referenced bill and certain representations made in CT Mirror,
March 25, 2013:

1. I represented Mr. Fourtin in the appeal which is the impetus for this bill. CT Mirror is wrong when it states that Mr. Fourtin did not contest the charge in this case. He surely did. He did so of course at trial. On appeal he could not challenge the main evidence, namely the credibility of the complaining witness, because credibility cannot be challenged in the appellate process. He made clear, however, in his brief, that he did not concede the state's version of events. An appeal resolves issues of law, not issues of fact, or purported fact, which was why he raised the issue as he did.

2. The attributed statement in the article that "people with disabilities are significantly more likely to be raped or sexually assaulted than people without a disability" is not supported by evidence in the article and is counter-indicated by evidence produced by the Department of Justice in its 2006 report "Criminal Victimization," published in *Bureau of Justice Statistics*. This report states that since 1993, on a national basis, the rate of sexual assaults nationwide has decreased 69 per cent. Another report, "Connecticut Law Enforcement Agency Crime Reports 1980 to 2005," at www.disastercenter.com/crime/ctcrime found that from 2005 to 2008, Connecticut ranked 49th in the nation in the incidence of rapes. Before that it ranked 47th. Thus not only are such crimes going down overall, they are going down with particular force here.

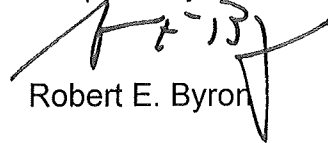
It is reasonable to infer, therefore, that since assaults overall are going down, assaults against persons handicapped are going down as well. Moreover, since neither report provides a separate category for the handicapped, it is reasonable to further infer that neither the Department of Justice nor the compilers of the Connecticut report consider that matter to be of sufficient scope or urgency to warrant special attention.

3. The wording of the bill would not exclude a wide swath of people who might want to have sexual relations but find themselves impaired; for instance, victims of stroke. This bill as written would criminalize per se the spouse or paramour of a stroke victim, with no indication when in a victim's recovery that criminalization would end, and what basis, or how. The appeal in the Fourtin case took four and a half years. This bill has the potential for that level of litigation and more.

4. The law as it exists does not disadvantage the state or a complaining witness. Juries are inclined anyway to believe women who charge sexual assault, and juries are especially inclined that way for women with disabilities. See, e.g., Bottoms, et al., "Jurors' Perceptions of Adolescent Sexual Assault Victims Who Have Intellectual Disabilities," *Law and Human Behavior*, Vol 27, No. 2, April, 2003. This study is consistent with others which speak to the biases of jurors in cases of sexual assault, all of which demonstrate a bias in favor of the complainant. See, e.g., Warren, et al., "The Believability of Children and Their Interviewers' Hearsay Testimony: When Less is More," *Journal of Applied Psychology*, Vol. 87, No. 5 Oct. 2002; McCauley, et al., "When will a child be believed? The impact of the victim's age and juror's gender on children's credibility and verdict in a sexual abuse case," *Child Abuse and Neglect*, Vol. 25, Issue 4 April, 2001; "Vidmar, "Case Studies of Pre- and Midtrial Prejudice in Criminal and Civil Litigation," *Law and Human Behavior*, Vol. 26, No. 1, Feb. 2002.

Finally, I note the present statute is derived from New York law and New York does not seem to have a problem with it. Thought might be given as to why people here do.

Respectfully,



Robert E. Byron

Note: I have submitted much of the above to CT Mirror by way of response to its article.